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## **OLR Bill Analysis**

**sSB 394 (File 338, as amended by Senate "A")\***

### ***AN ACT CONCERNING MEDICAID ELIGIBILITY AND THE IDENTIFICATION AND RECOVERY OF ASSETS.***

#### **SUMMARY:**

By law, Medicaid long-term care applicants who transfer assets for less than fair market value within five years of applying for coverage are presumed to have made the transfer to qualify for Medicaid. People who cannot successfully rebut this presumption face a Medicaid ineligibility period (penalty period) based on the uncompensated value of that asset. The value of the transferred asset is considered a debt owed to the Department of Social Services (DSS).

This bill creates a second debt that is owed to a nursing home that continues to serve such individuals without payment during the period of Medicaid ineligibility. It also creates a process for collecting the debt.

The bill allows nursing homes to bring civil actions against the person transferring the asset (transferor), the person receiving it (transferee), or anyone else who knew that the asset was transferred to qualify for Medicaid. The bill also authorizes a nursing home to bring a civil action to recover any unpaid applied income that it is owed.

To the extent federal law allows such, the bill provides that a person cannot be determined ineligible for Medicaid based solely on having a life insurance policy with a cash value under \$10,000. The program's asset limit, which is established in state regulation, is \$1,600 for a single person. Currently, DSS disregards towards that limit the first \$1,500 of cash value in a life insurance policy the Medicaid applicant owns.

The bill also makes a technical change.

\*Senate Amendment "A" replaces the underlying bill, which (1) defined a "disqualifying asset," (2) allowed for debt collection using a private collection agency, and (3) permitted DSS to provide financial relief to a nursing home that served a resident without payment and made such payments debts owed to DSS.

EFFECTIVE DATE: October 1, 2012

## **TRANSFERS THAT RESULT IN A DEBT AND DEBT COLLECTION**

### ***Creation of a Debt to a Nursing Home***

By law, if a Medicaid applicant or recipient transfers or assigns assets that result in a penalty period, this action also creates a debt to DSS. The amount of the debt equals the amount of medical assistance provided to or on behalf of the transferor on or after the date the assets are transferred. (Apparently, the term "medical assistance" has been interpreted to mean Medicaid, but Medicaid would not be provided during a penalty period. Therefore, DSS in practice does not accumulate a debt.)

The bill creates a second debt owed to a nursing home equal to the unpaid cost of care the facility provides to the transferor during a penalty period.

By law, the amount of the debt cannot exceed the asset's fair market value when it is transferred. The bill specifies that the debt amount applies only to transferred assets that are the subject of the penalty period.

By law, the DSS commissioner, administrative services commissioner, and the attorney general have the power or authority to seek administrative, legal, or equitable relief as provided by other laws or by common law. The bill specifies that this relief is obtaining payment of the debt.

The bill provides that if the commissioner (presumably the DSS commissioner) determines that assets were willfully transferred for the purpose of obtaining or maintaining Medicaid eligibility, he may assess a monetary penalty up to double the amount of debt against the

transferor and any transferee who knew of the transfer's purpose. The commissioner must (1) take into account any payment made toward the debt when assessing the penalty and (2) have sufficient evidence to prove the transfer was willful and for purposes of obtaining or maintaining Medicaid eligibility.

### ***Debt Collection***

The bill directs the commissioner, by January 1, 2013, to issue a request for information for debt collection services to collect money owed to nursing homes for these debts. Any money collected must be paid directly to the nursing home after adjusting for administrative costs and other costs associated with pursuing the debt.

## **CIVIL ACTIONS**

### ***Asset Transfers Made to Qualify for Medicaid***

The bill authorizes a nursing home that has provided services to a transferor during a penalty period (during which there would be no Medicaid payment) to bring an action to collect a debt for any unreimbursed care it provides. It may bring this action only against someone who knew that the transfer was made to obtain or maintain Medicaid eligibility, including (1) the transferor (2) any person authorized under law to control the transferor's income (e.g., conservator), and (3) the transferee. (State law already allows for a civil remedy to collect on a debt but it is not specific to nursing homes.)

If a court determines, based on a fair preponderance of the evidence, that a defendant incurred a debt to a nursing home by (1) willfully transferring a nursing home resident's assets to enable the resident to qualify for or continue to receive Medicaid, (2) receiving the assets knowing of this purpose, or (3) making a material misrepresentation or omission concerning these assets, it must award the home double the amount of actual damages. Any court, including a probate court, may also order these assets or proceeds to be held in constructive trust to satisfy the debt.

### ***Failure to Pay Applied Income***

The bill also authorizes a nursing home to bring a civil action to

recover any unpaid applied income it is owed by a Medicaid recipient. Applied income is defined as the amount of a Medicaid recipient's income that (1) DSS deems is required to be paid to a health care provider to cover the cost of care and services and (2) takes into consideration modification to it due to changes in a community spouse's minimum monthly needs allowance (see BACKGROUND). The bill provides that the civil action is in addition to any other remedy the law authorizes to recover the debt.

A court must award a home double damages if it determines, by a preponderance of the evidence, that a defendant willfully failed to pay or withheld applied income that was due and owing and the payment is more than 90 days overdue.

The bill requires nursing homes to provide written notice to Medicaid recipients that failure to pay within this time frame will result in the above award remedy. It prohibits a home from filing suit until 30 days after it provides this notice to both the recipient and any person authorized by law to control the recipient's applied income. The home is permitted to provide this notice at any time it begins providing services to the Medicaid recipient.

## **BACKGROUND**

### ***Applied Income of Nursing Home Residents and Minimum Monthly Needs Allowance for Community Spouse***

Medicaid-covered nursing home residents generally must turn over any monthly income they receive (e.g., Social Security) to the home (minus a monthly personal needs allowance) and the Medicaid program pays the home the difference between the "applied income" and the daily rate DSS sets for the home.

The amount of applied income takes into account whether the nursing home resident has a spouse in the community. Under federal Medicaid rules, these spouses are entitled to receive a portion of the resident's income, which is called the minimum monthly needs allowance (42 USC § 1396r-5(d)(3)).

## **COMMITTEE ACTION**

Human Services Committee

Joint Favorable Substitute

Yea 15      Nay 1      (03/22/2012)